*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.3803 of 2004

%18-11-2004

Dr.A.Krishna Veni

..PETITIONER

Vs.

$ The Registrar, NTR University of Health Sciences, Vijayawada, A.P.,

..RESPONDENT

! COUNSEL FOR PETITIONERS: Mr.S.Satyanarayana Prasad
^ COUNSEL FOR RESPONDENTS 1 and 2: Dr.Y.Padmavathi
COUNSEL FOR RESPONDENT No.3 : - - -

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>HEAD NOTE:

?CASES REFERRED:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 3803 of 2004

Between:

Dr.A.Krishna Veni, w/o Dr.A.Subboth Kumar, working as CAS, Mobile Unit,
Social & Preventive Medicine Department, Gandhi Medical College, Hyderabad

..... PETITIONER

AND

1 The Registrar, NTR University of Health Sciences, A.P. at Vijayawada.
2 The Selection Committee Constituted by the NTR University of Health

Sciences, Vijayawada.
3 Dr. Murali, S/o Not known to the petitioner, Working as Civil Assistant

Surgeon, Jhanampet Primary Health Centre, Mahaboobnagar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus declaring the action of respondents 1 and 2 in allotting the seat in M.D. Anesthesia meant for B.C., 'D'/unreserved/services to a category of B.C., 'D'/Services/Local i.e., the third respondent though the petitioner secured merit rank than the third respondent as illegal, improper, unjust, arbitrary and contrary to law and further direct the respondents 1 and 2 to provide M.D., Anesthesia seat to the petitioner for the academic year 2003/2004.

Counsel for the Petitioner: Mr. S.Satyanarayana Prasad

Counsel for Respondents 1 and 2: Dr.Y.Padmavathi

Counsel for Respondent No.3 : - - -

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3803 OF 2004

ORDER:

The petitioner is a medical graduate. She appeared for post graduate medical entrance test, 2003 held on 31.12.2003. She belongs to BC(D) category and in the entrance test, she obtained rank 628. She appeared for selections. In the first counselling, she was admitted to DGO course at Kurnool Medical College as a local candidate of Sri Venkateswara University (SVU) local area. In M.D.(Anaesthesia), in the first counselling, the BC candidate with rank 262 belonging to Andhra University

(AU) local area was admitted to the unreserved (non-local) seat as a service candidate in Osmania Medical College. The candidate with rank 21 was also admitted in OC unreserved seat in Osmania Medical College. Thus, during the first selections, fifteen (15) seats in Osmania University (OU) local area were filled up, out of which, two seats were unreserved and both the seats were allotted to AU local area candidates, who were treated as non-local candidates in relation to OU local area.

Respondents 1 and 2 again called for selections on 14.02.2004, in so far as the seats that fell vacant. Be it noted, candidates with rank numbers 21, 252 and 262, who were selected in unreserved seats as well as OC local seats, did not join the course. It is the case of the petitioner that on 27.02.2004, in the selections held for filling up resultant vacancy when the petitioner's turn came, she was called when one seat in M.D.(Anaesthesia) vacated by BC(D) service non-local candidate was available. Though the petitioner opted for the said seat, she was not admitted to the seat but the seat was given to the third respondent, who is BC(D) service local candidate in relation to OU local area. Assailing the said action of the respondents 1 and 2, the petitioner filed the writ petition seeking a direction to the respondents 1 and 2 to admit the petitioner in M.D.(Anaesthesia) for the academic year 2003-04.

This Court admitted the writ petition on 29.04.2004 and ordered notice to the respondents. Respondents 1 and 2 are represented by the learned standing counsel for N.T.R.University of Health Sciences (hereafter called, the University). On 06.07.2004, this Court permitted the learned counsel for the petitioner to take out notice to the third respondent. Again on 17.09.2004, this Court ordered fresh notice to the third respondent and permitted the counsel for the petitioner to take out notice. After taking out notice, a memo of proof of service of notice on the third respondent is filed, which shows that the third respondent is duly served on 22.07.2004. In spite of the same, none appears for the third respondent. Having regard to the nature of the case, the matter was heard finally.

In the counter affidavit filed by the Registrar of the University, it is stated that the two unreserved seats are opted by the candidates with rank numbers 114 and 331, who are more meritorious than the petitioner and therefore the rules have not been contravened. It is further stated that in the first selections for M.D.(Anaesthesia) in OU local area after considering the options exercised by the candidates, the following had emerged.

S.No	Rank	H.T.No.	Name	Categ	Area	Serv	Admitted Category	Admitted College
1.	21	4003	Addagalla Srimannarayana	OC	AU		OC/UR	Osmania Medical College, Hyd
2.	149	6211	Siddartha. R	OC	OU		OC/L/	Osmania Medical College, Hyd
3.	163	7392	Swapna.K	OC	OU		OC/L/	Gandhi Medical College, Sec
4.	179	8893	Sudeep	OC	OU		OC/L/	Osmania Medical College, Hyd
5.	210	8330	Krishna Reddy.P	OC	OU		OC/L/	Osmania Medical College, Hyd

6.	226	8145	Chaya Devi.P	OC	OU		OC/L/	Osmania Medical College, Hyd
7.	252	6042	Deepak, Bachu	BCB	OU		OC/L/	Kakatiya Medical College, Wgl.
8.	262	3131	Lakshmi M.VA.	BCD	AU	Yes	BCD/UR/Service	Osmania Medical College, Hyd
9.	318	8468	Naresh Kumar.K	BCD	OU		BCD/L/	Osmania Medical College, Hyd
10	327	7397	Swathi K	SCC	OU		SC-C/L/	Gandhi Medical College, Sec
11	396	8055	Anjalena Rao,P.J.	SCC	OU		SC-C/L/	Kakatiya Medical College, Wgl
12	529	8569	Raghuveer S	SCB	OU		SC-B/L/	Osmania Medical College, Hyd
13	617	7404	Trilok Shyam S	BCD	OU	Yes	BC-D/ L/Service	Gandhi Medical College, Sec
14	1157	8126	Buddha Vara Prasad G	SCB	OU		SC-B/L/	Kakatiya Medical College, Wgl
15	1205	0061	B. Kishan Rao	OC	OU		OC/L/	Mamatha Medical College, Khm.

The candidates with rank numbers 21, 252 and 262 at serial numbers 1, 7 and 8 respectively in the above table, did not join the course and therefore second selections were held. After second selections, the following candidates were selected.

S.No	Rank	H.T.No.	Name	Categ	Area	Serv	Admitted Category	Admitted College
1.	114	1298	Sanjay Soloman Raj B	OC	NL		OC/UR	Osmania Medical College, Hyd
2.	179	8893	Sudeep	OC	OU		OC/L/	Osmania Medical College,Hyd
3.	204	7390	Suresh Reddy Ch	OC	OU		OC/L/	Osmania Medical College, Hyd
4.	210	8330	Krishna Reddy P	OC	OU		OC/L/	Osmania Medical College,Hyd
5.	226	8145	Chaya Devi.P	OC	OU		OC/L/	Osmania Medical College, Hyd
6.	242	8948	Sunitha K	OC	OU		OC/L/	Gandhi Medical College, Sec
7.	318	8468	Naresh Kumar K	BCD	OU		BC-D/L/	Osmania Medical College, Hyd.
8.	327	7397	Swathi K	SCC	OU		SC-C/L/	Gandhi Medical College, Sec
9.	331	8300	Kavitha Kumari B J	BCB	SVU		OC/UR	Kakatiya Medical College, Wgl

10	396	8055	Anjalena Rao P.J.	SCC	OU		SC-C/L/	Kakatiya Medical College, Wgl
11	529	8569	Raghuveer S	SCB	OU		SC-B/L/	Osmania Medical College, Hyd
12	617	7404	Trilok Shyam S	BCD	OU	Yes	BC-D/ L/Service	Gandhi Medical College, Sec
13	795	8438	Muralidhar A	BCD	OU	Yes	BC-D/ L/Service	Osmania Medical College, Hyd
14	1157	8126	Buddha Vara Prasad G	SCB	OU		SC-B/L/	Kakatiya Medical College,Wgl
15	1205	0061	B. Kishan Rao	OC	OU		OC/L/	Mamatha Medical College, Khm.

As can be seen from the above table, though seat number 1 was allotted to a candidate belonging to OC/unreserved, in so far as the seat vacated by the candidate with rank 252 (candidate belonging to BC(B) – OC local) and the seat vacated by a candidate with rank 262 (candidate belonging to BC(D) – unreserved service) were not allotted to the candidates belonging to those categories, about which, the grievance is made in the writ petition as the only submission to sustain the writ petition.

The learned senior counsel for the petitioner, Sri S.Satyanarayana Prasad, placed strong reliance on the Regulations governing allotment of seats to various categories and service candidates contained in the prospectus of the University (hereafter called, the Regulations) as well as Rule 10 of the A.P.Medical Colleges (Admission into Post Graduate Medical Courses) Rules, 1997 (hereafter called, the Rules) amended from time to time. He would submit that the University is bound to follow the rules and regulations while filling up the seats and by not adhering to Regulation (iii) of the Regulations as well as Rule 10 (vi) of the Rules and the selections are vitiated in so far as the petitioner is concerned. **Per contra,** the learned standing counsel for University, Dr.Y.Padmavathi, submits that when the selections are conducted, the University is bound to implement the A.P.Educational Institutions (Regulation of Admissions) Order, 1974 (hereafter called, the Presidential Order), promulgated by the President of India, and in the process, local area reservation prevails over other reservations and therefore at the time of second selections, the higher ranking candidates were selected for filling up unreserved seats.

Rule 3 (2) of the Rules provides for reservation of 15% of seats in clinical and 30% of the seats in non-clinical subjects in each group for degree and diploma courses for in-service candidates in each category under service quota. Rule 4 of the Rules provides for local area reservation and 85% of the seats shall have to be reserved for the candidates belonging to OU local area keeping 15% of the seats, as far as possible, unreserved for both service and in-service candidates. After conducting entrance test, the merit list has to be drawn as per Rule 9 of the Rules basing on the marks of the candidates in order of merit. Rule 10 of the Rules deals with selections and there is no dispute nor denial that Rule 10 of the Rules has to be followed while making selections whether at the time of first counselling (first selections) or second counselling (second selections) and so on and so forth. Rule 10 of the Rules, in so far as it is relevant and reads as under.

10. Selections:- (i) Provisional selection shall be made by the Selection Committee constituted by the University of Health Sciences subject to these rules.

(ii) The University of Health Sciences will announce the dates and center or centers at which selections will be made.

(iii) The selection committee shall display the charts showing the allocation of seats to Scheduled Castes, Scheduled Tribes and Backward Classes in the Medical Colleges of the University area, local area wise at the time of selections.

(iv) On the dates notified the candidates shall be called in order of merit by the selection committees and ask them to opt for subject of the candidates choice in the then available

subjects in the college. The selection committee will issue the selection order immediately. The selection will be made only from among the candidates who physically present themselves when their hall ticket numbers are called out in order of merit.

(v) (a) Claims of the candidates will not be considered if they are absent when called at the time of selection and the next in the merit would be selected. The selected candidate shall submit the original certificates to the selection committee and pay fees immediately at the counters available at the center.

The candidates shall submit required bond on or before the date fixed for the same.

(b) If a candidate after choosing the subject fails to pay the fees or after paying the fees fails to submit the bond the selection of such candidate stands cancelled automatically.

© The candidates shall be called to appear before the selection committee one after the other and they shall not enter the selection committee room in groups.

(d) Any person who obstructs the proceedings of the selection committee or otherwise misbehaves or causes disturbance at the selection committee meetings and obstructs or causes obstruction to its peaceful functioning shall be liable for such disciplinary action as may be taken by the University.

(e) Candidates shall be present till the end of the selections and be available in case if they are recalled for any reasons.

N.B.:- (a) the procedure envisaged in G.O.Ms.No.996, E & S.W. Department, dt.11-11-75 will be followed in selecting the candidates.

(b) Procedure indicated in Annexure-III to G.O.P.No.646, Education, dt.10-07-79 shall be followed in selecting the local candidates.

(vi) (a) Vacancies after the 1st selection shall be displayed on the date notified in all the Medical Colleges. These vacancies shall be filled by the Selection Committee on the dates at the centers to be notified by the University as per merit, subject to these rules.

(b) Resultant vacancies will be open to all the candidates with ranks below the rank of the candidate who vacated the seat for that speciality, in that area and also those candidates who were absent in the earlier selections.

(emphasis supplied)

The selection method contemplates calling the candidates on the date of selection in order of merit and asking the candidate to opt for the subject of candidate's choice. If the seats are available, at the time when the candidates option is called for, the selection committee shall have to issue a selection order immediately. Such selection order cannot be reviewed nor reversed unless the selection committee comes to conclusion that such selection has been obtained by misrepresentation or fraud or gross injustice (See para below Rule 10(vi) of the Rules). Be that as it is, under Rule 10(vi) of the Rules requires the selection committee to display the vacancies after first selection and take up selections for those resultant vacancies "subject to the Rules". Clause (b) of sub-rule (vi) of Rule 10 of the Rules lays down that resultant vacancies will be open to all candidates with ranks below the rank of the candidate who vacated the seat for that speciality in that area. The same has

been incorporated in the Regulations of the University included in the prospectus as under.

(i) No. of un-reserved seats in each subject indicates the maximum number of non-local candidates which can be allotted in that subject if they are eligible on merit.

(ii) The seats reserved for B.C. and S.C. categories will be allotted to each sub-category as per that merit.

(iii) The resultant vacancies shall be filled by the candidates belonging to the same category as those who vacated the corresponding seat.

(iv) If the service candidates are not available to fill their quota, those seats shall be allotted to non-service candidates of the respective categories.

(emphasis supplied)

Regulation (iii) of the Regulations and Rule 10(vi) of the Rules do not leave any doubt that the resultant vacancies shall be filled by the candidates belonging to the same category as those vacated the corresponding seat. In simple terms, it only means that if a OU local candidate belonging to OC category vacates the seat, in the second selections such seat has to be filled up only by OU local OC candidate duly considering all the candidates, who obtained ranks below the candidate who vacated the seat. In so far as this case is concerned, the candidate with rank 262, who was admitted in the first counselling, is BC(D) service/ non-local (unreserved candidate) and therefore as per Rule 10(vi) of the Rules read with Regulation (iii) of the Regulations, the second respondent was bound to earmark that seat to be filled up with only BC-D service non-local candidate. Needless to say that in so far as OU local area is concerned, the candidates belonging to SVU local area, AU local area are non-local candidates and petitioner being a candidate belonging to SVU local area is a non-local candidate in relation to OU local area. Hence, she has to be considered to fill up the seat vacated by the candidate with rank 262, along with other similar service non-local candidates.

In so far as the relief in this writ petition is concerned, the petitioner has obtained a rank 628, and there is no material before this Court to come to a conclusion that there are no candidates between the ranks 262 and 628 belonging to BC(D) service and who are non-local candidates for OU local area. Therefore, no positive direction can be granted in favour of the petitioner in this situation. However, the selection committee shall have to consider the case of the petitioner in the light of this judgment and if she is the next highest ranking candidate, after the candidate with rank 262, she shall have to be admitted into
I year M.D.(Anaesthesia) course, if necessary, by cancelling the admission given to the third respondent. This exercise shall be done within a period of two weeks from the date of receipt of copy of this order.

The writ petition, with the above observations and directions, is disposed of, without any order as to costs.

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(V.V.S.RAO,J)

18.11.2004.

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Note: LR copy be marked.

By order

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To

(One fair copy to the Hon'ble Mr.Justice V.V.S.Rao, for his Lordships kind perusal)

1. The Registrar, NTR University of Health Sciences, Vijayawada, Andhra Pradesh.
2. The Selection Committee constituted by NTR University of Health Sciences, Vijayawada.
3. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
4. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.
5. 8 LR Copies.

6. 2 CD copies.